

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

CRL.A.No. 2377 of 2006()

C.C.No.542/2000 OF JUDICIAL MAGISTRATE OF FIRST CLASS,
SASTHAMCOTTA, DATED 23.1.2004.

APPELLANT: COMPLAINANT:

KERALA VYAPARI VYAVASAYI EKOPANA SAMITHI
SASTHAMCOTTA UNIT, REP. BY ITS THEN SECRETARY,
K.SIVAN PILLAI, ASWTHY, SASTHAMCOTTA P.O.,KOLLAM.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS: ACCUSED:

1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. S.K. DEEPAK,
PROPRIETOR, SUDARSANA TRADERS, MANAKARA MURI,
SASTHAMCOTTA P.O., KOLLAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 22/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 2377 of 2006

Dated this the 22nd February, 2007.

J U D G M E N T

The complainant preferred a complaint under Section 138 of the Negotiable Instruments Act, against the second respondent, accused, on 8.9.2000. After taking the same on file, the Judicial First Class Magistrate Court, Sasthamcotta, issued notice to the second respondent. On his appearance, the matter was posted for evidence on 22.1.2004. However, the complainant was laid up on that date, and, therefore, his counsel sought for condonation of his absence. Accordingly, this case is adjourned to 23.1.2004. On that also, the complainant has filed a petition through his counsel seeking adjournment on the ground of illness. But the said prayer was rejected and the complaint was dismissed, consequently acquitting the accused. Hence this appeal, after obtaining leave of this Court, by the complainant, praying to set aside the judgment of the court below, in C.C.No.542/2000.

2. Notice was sent to the second respondent, the accused. However, it was returned unserved, on the ground of the absence of the second respondent. The appellant, on enquiry, found

that the accused had left the State without leaving his present address. Therefore, service of the notice, in usual course, was not practicable. Hence, the appellant filed Crl.M.A.No.7719/2006 praying to allow the appellant to serve the notice through his counsel representing him before the lower court, Sri.P.Muraleedharan Nair, and also service of notice on any adult male member of his family. The same was allowed. Accordingly, after hearing the counsel, leave was granted, and thereafter this appeal is preferred. The records show that service in respect of the respondents are complete. Public Prosecutor is appearing for the first respondent, and there is no representation from the second respondent, the accused.

3. I have heard the learned counsel appearing for the appellant. I have also perused the judgment in C.C.No.542/2000. The learned Magistrate has reproduced the contention of the second respondent, accused, as no evidence was adduced by the complainant, on the date fixed for the same. Hence, the proceedings against the second respondent, accused, was stopped by the learned Magistrate and he was acquitted under Section 256 Cr.P.C.

4. In the light of the above facts situation, I am of the view that an opportunity should be given to the parties to adduce evidence, in respect of the contentions raised by them. To enable the same, I set aside the impugned judgment, dated 23.1.2004, and restore C.C.No.542/2000, to the file of the Judicial First Class Magistrate Court, Sasthamcotta.

5. The complainant shall appear before the court below on 20.3.2007.

6. As the second respondent, accused is not before me, despite completion of the service, the court below shall take coercive steps against him for securing his presence. The learned Magistrate shall give priority in disposal of this matter, as the complaint was filed on 8.9.2000, and dispose of the same, at the earliest, and in any case, within three months from the date of production/appearance of the second respondent, accused.

Criminal Appeal is allowed as above.

**J.M. JAMES,
JUDGE**

nj.